

IBLA 87-628

Decided February 28, 1990

Appeal from a decision of the Director, Minerals Management Service, affirming assessment of interest charges for late payment of royalties. MMS-87-0124-OCS.

Set aside and remanded.

1. Federal Oil and Gas Royalty Management Act of 1982:
Assessments--Federal Oil and Gas Royalty Management Act of
1982: Royalties--Oil and Gas Leases: Royalties: Interest--
Oil and Gas Leases: Royalties: Payments

An exception to late payment charges for royalty payments filed after the end of the month following the month in which the oil and gas is produced and sold may be recognized where the payor has filed a sufficient estimated payment in accordance with the instructions in the Payor Handbook. An estimated payment is made on Form MMS-2014 and requires identification of the payor, the lease number, and the product code and selling arrangement number. An estimated payment may only be established initially for the month immediately preceding the month in which the report and payment are filed and, thereafter, the estimated balance is rolled over monthly to cover production and sales in succeeding months.

2. Administrative Procedure: Administrative Record--
Administrative Procedure: Administrative Review--
Appeals: Generally--Rules of Practice: Appeals:
Generally

As a general rule, an administrative decision is properly set aside and remanded where it is not supported

by a case record providing the Board with the evidence necessary for an objective, independent review of the basis for the decision.

APPEARANCES: David A. Waskowiak, Esq., for Shell Offshore, Inc., New Orleans, Louisiana; Howard W. Chalker, Esq., Office of the Solicitor, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE GRANT

On October 9, 1986, the Royalty Management Program (RMP) Office of the Minerals Management Service (MMS) issued Bill of Collection No. 05600932 to Shell Offshore, Inc. (Shell), assessing late payment interest charges in the amount of \$58,376.81. With its payment of the full amount, Shell filed a timely notice of appeal to the Director of MMS. The appeal challenged assessment Nos. 65 through 88, 92, 93, and 97, in the amount of \$22,593.79.

Prior to a ruling on the appeal by the Director, the RMP Office agreed to review assessment Nos. 65 through 88 and 93, which totaled \$4,316.89. The RMP Office determined that all of these assessments except for Nos. 72 and 73 were invalid and agreed to initiate a refund in the amount of \$3,288.84. It appears that Shell was satisfied with the review of assessment Nos. 72 and 73, as its statement of reasons filed with the Director addressed only assessment Nos. 92 and 97, totaling \$18,276.90.

In its appeal to the Director, Shell asserted that it had made "a one-time estimated royalty payment at the Payor level which exceeded actual royalties due." Specifically, Shell asserted that:

[R]eview of the Bill reveals assessments totalling \$18,276.90 for late payments resulting from not having estimates at the AID [accounting identification number], Product Code/ Selling Arrangement level, even though [Shell] made a sufficient estimated royalty payment at the Payor level to cover [Shell's] actual royalty obligations. Qualifier F of the Payor Handbook * * * states that, for Federal leases, "[i]n any reporting month that the total of the estimated payments previously reported for a specific payor code equals or exceeds the actual royalty due on those same AIDs, products codes, and selling arrangements no late payment will be assessed." Payor Handbook p. 3.070-4 (12-84 revision) (emphasis added). [1/]

(Statement of Reasons to the Director at 2).

A report on the appeal was submitted to the MMS Division of Appeals by the RMP Office. It stated that the royalty for the two offshore leases at issue

was due at MMS by the last day of August 1985 because SHELL was reporting the July 1985 sales. According to MMS records, the estimate for lease 054-003936-0 was established for September 1985 sales, and the estimate for lease 054-004424-0 was established for August 1985 sales. Therefore, when the report and payment for July 1985 for these leases was received by MMS on September 27, 1985, the royalty was 27 days late because SHELL had not established estimates for the July 1985 sales month, and royalties were due by the last day of the following month, or August 31, 1985.

(RMP Field Report at 2). In regard to Shell's argument, the report stated simply that "[a]llthough SHELL may have had estimates at the Payor level

1/ Minerals Management Service, Royalty Management Program, Oil and Gas Payor Handbook [hereinafter cited as Payor Handbook]. The various explanatory paragraphs in the Payor Handbook under the heading "Reporting Estimated Royalty Payments are labeled alphabetically from A through F and described as "Qualifiers." The requirements for estimated royalty payments found in the current version of the Payor Handbook are substantially the same although the format of the codification has changed. See 2 Payor Handbook § 3.5 (1986).

sufficient to cover actual royalty due, the bill was not issued for insufficiency of estimates." Id.

By a decision dated May 19, 1987, the Director ruled on the appeal. The decision held that:

The royalties for these two leases were due August 31, 1985, because Shell was reporting July 1985 sales. The MMS received the July report and payment on September 27, 1985. However, MMS's records show that an estimate for one lease was established for August 1985 sales and for the other lease for September 1985 sales, but an estimate was not on file for either lease for July 1985 sales. Since the royalties were paid late and there were no estimates filed on these leases for the appropriate sales month, the interest assessments are valid.

(Director's Decision at 2).

Shell appealed the MMS decision of May 19, 1987, to this Board. The statement of reasons for appeal filed with the Board repeats the argument raised with MMS. Shell additionally argues that MMS' grant of its appeal on Bill for Collection No. 04600585 involving the same issue as this appeal shows that MMS agrees with Shell's position.

In its answer, MMS contends that "estimated payments must be sufficient at a lease level, not a payor level, and for the two leases at issue Shell did not have an estimated payment established" (Answer at 1). In support, MMS quotes Qualifier A of the Payor Handbook which stated: "The estimated payment must be made against a specific AID and MMS assigned product code and selling arrangement number. Estimated payments are only reported once."

(Payor Handbook at 3.070-2, rev. 12/84 (emphasis in original).) MMS states that "[a]n AID is equivalent to a lease number" (Answer at 3). MMS also presents a copy of Form-2014 which appeared in the Payor Handbook at page 3.070-3 to illustrate the method of establishing an estimated royalty payment for a lease. MMS notes that the instructions for filling out the form on page 3.070-2 cited by Shell require the payor to enter the "MMS assigned accounting identification (AID) number in block 6." Finally, MMS states that the appeal of Bill for Collection No. 04600585 referred to by Shell was granted because upon investigation it was determined that an estimated payment was on file for the leases in question (Answer at 5).

[1] As a general rule, royalty payments on production are due by the end of the month following the month in which the oil and gas is produced and sold. 30 CFR 218.50(a). Section 111(a) of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. § 1721(a) (1982), specifically provides that "where royalty payments are not received * * * on the date that such payments are due, or are less than the amount due, the Secretary shall charge interest on such late payments or underpayments * * *." The assessment of interest charges on late royalty payments is also required by provisions of the implementing regulations. 30 CFR 218.54. Exceptions to a late payment charge are authorized "when estimated payments on minerals production have already been made timely and otherwise in accordance with instructions provided by MMS to the payor." 30 CFR 218.150(b). The instructions for making estimated payments are found in the Payor Handbook.

Paragraph F of the Payor Handbook cited by appellant provides that: "In any reporting month that the total of the estimated payments previously reported for a specific payor code equals or exceeds the actual royalties due on those same AIDs, product codes, and selling arrangements no late payment charges will be assessed." Payor Handbook at 3.070-4 (12/84). An understanding of the requirements for establishing an estimated payment requires reference to the other relevant paragraphs of this section of the Payor Handbook. Thus, paragraph A provides that "[t]he estimated payment must be made against a specific AID [2/] and MMS assigned product code and selling arrangement number" (Payor Handbook at 3.070-2 (12/84) (emphasis in original)). The Payor Handbook further explains that once the estimated payment is made, the full amount of the estimated payment carries forward from one month to the next month and the amount of the estimated payment is not reduced by the actual royalties paid. The result is that the payor is allowed to delay payment of the actual amount of royalty due until the end of the second month following the month the production is sold so long as a sufficient estimate balance exists. Id.; see Yates Petroleum Corp., 104 IBLA 173 (1988).

Estimated payments are reported on Form MMS-2014 and must be established for the sales month immediately preceding the month the report and payment are filed with MMS (retroactive establishment of estimate balances to avoid interest charges is not allowed) (Payor Handbook at 3.070-2,

2/ An AID or accounting identification number "is assigned by MMS and consists of a 10-digit lease number followed by a three-digit revenue source code. * * * The AID number is provided by MMS on a Payor Confirmation Report (PCR) after a payor submits appropriate data on a Payor Information Form (PIF)." 2 Payor Handbook § 2.3.3 (1986).

Paragraph C, and 3.070-3 (12/84)). This Board has affirmed the necessity of careful compliance with the procedures for estimated payments in order to avoid interest charges for late payments. See Yates Petroleum Corp., supra (estimated balance on file will not bar interest charges for late payment where the royalty payment was made after the second month following the sale month because the estimate rolls over from one month to the next to cover sales in the latter month).

Accordingly, the issue presented is whether appellant properly filed an estimated royalty payment on Form MMS-2014 for each of the leases at issue for the July production/sales month. Such an estimated payment would have to have been filed by the end of August 1985. MMS has asserted that this was not done as an estimated payment for lease 054-003936-0 was established for September 1985 sales and the estimate for lease 054-004424-0 was established for August 1985 sales. Unfortunately, the administrative record before the Board contains neither copies of the Form MMS-2014 on which the estimates were submitted nor copies of the forms on which the payments for July 1985 production were submitted late. Thus, the record before the Board does not contain any documentation establishing the facts from which the issue of proper application of the provisions of the Payor Handbook arises. The record contains copies of the MMS bill for collection; Shell's November 14, 1986, cover letter enclosing payment of the assessment and notice of appeal; Shell's December 24, 1986, letter discussing the resolution of assessment Nos. 65 through 88 and 93; Shell's statement of reasons to the Director and cover letter; the RMP Office field report and cover memorandum; MMS' docketing letter of April 1, 1987, acknowledging receipt of

the appeal to the Director; MMS' decision of May 19, 1987; and MMS' May 22, 1987, cover letter transmitting the decision to Shell. It does not contain documents related to the estimated payments MMS asserts were made for August and September 1985 sales. In particular, it does not contain any documentation of receipt of Shell's royalty payments by MMS for which MMS is assessing late payment interest charges.

[2] As a general rule, an administrative decision is properly set aside and remanded if it is not supported by a case record providing this Board the information necessary for an objective, independent review of the basis for the decision. Fred D. Zerfoss, 81 IBLA 14 (1984). The reason for filing the complete agency record with the Board is evident: it is impossible for this Board to engage in intelligent, objective review of the agency's decision without knowing the circumstances leading to the action and the agency's reasons for taking the action. See Soderberg Rawhide Ranch Co., 63 IBLA 260 (1982). The Board is expressly authorized to review MMS decisions such as the one under appeal in order to issue the final administrative decision on behalf of the Secretary. 43 CFR 4.1(b)(3), 4.21(c). Obtaining the complete administrative record is indispensable to the responsible exercise of this review authority.

As explained in Mobil Oil Exploration and Producing, Southeast, Inc., 90 IBLA 173, (1986), the agency case file must be complete as it may be subject to direct judicial scrutiny. It is well established that, absent a complete record, this Board and a reviewing court are incapable of complying with the requirements statutorily mandated by the Administrative

Procedure Act. See e.g. Higgins v. Kelly, 574 F.2d 789, 792 (3rd Cir. 1978). When the validity of the agency's action is not sustainable on the administrative record compiled by that agency, the courts are obliged to vacate the agency decision and remand the matter for further consideration. See Camp v. Pitts, 411 U.S. 138, 143 (1973). Accordingly, we find it necessary to ensure that the record is established which will support the administrative decision.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Director, MMS, dated May 19, 1987, is set aside and the case is remanded.

C. Randall Grant, Jr.
Administrative Judge

I concur:

Charles B. Cates
Director, Ex Officio

